

Guide to pre-marital and post-marital agreements

While nobody embarks on a marriage or civil partnership anticipating or expecting that the relationship will break down, it is sensible to think about how your financial position would be affected if it did.

When considering financial matters at the time of a divorce or the dissolution of a civil partnership, the court's starting point for the division of assets is typically an equal division. The court may depart from equal division in any particular case where fairness requires a different outcome; for example because of a difference in income or earning capacities, or because of the financial needs of the parties and any children.

The rules surrounding financial settlements have a particular significance for increasing numbers of people. Many people are marrying or entering into a civil partnership later in life – the average age for a first marriage in England and Wales is now 36 for men and 33 for women. Such couples are more likely to have accumulated assets prior to the marriage or civil partnership, while those marrying for a second time may want to protect any money or property received from the first marriage.

If there are children from a previous marriage or relationship, a parent may well want to ensure that any money or property that they have at the time of the marriage is preserved for their children, rather than their new spouse or civil partner.

Pre-marital and post-marital agreements are an increasingly popular option for protecting assets and income within a marriage or civil partnership and this guide covers some of the key points relating to these agreements.

However, please note that this is for general guidance only and you should always seek professional advice tailored to your own circumstances before entering into any arrangements.

Pre-marital and post-marital agreements: the basics

A “pre-marital” or “pre-nuptial” agreement (often referred to as a ‘pre-nup’) or a pre-partnership agreement in a civil partnership, is an agreement between a couple made before they formalise their relationship. Such agreements are designed to set out the financial arrangements that will apply, and what should happen to their property and assets in the event of a permanent separation.

Where a couple have entered into a civil partnership or a marriage without an agreement, they can put in place a post-partnership or post-marital agreement to establish the financial and other arrangements in the event of a dissolution or a divorce.

Whilst pre-marital (and pre-partnership) agreements are not strictly legally enforceable, the terms of an Agreement were approved and held in favour of by the Supreme Court ruling in the case of *Radmacher v Radmacher* (formerly *Granatino*) in October 2010. Since this date, the courts have applied greater weight to pre-marital and pre-partnership agreements which has provided greater security to parties getting married.

“It’s all in the preparation”



Putting an agreement in place: issues to consider

The decision to put in place a pre-marital, or post-marital agreement is one that requires careful consideration.

Every couple is different and for some such an agreement would be unthinkable. For others, it is pragmatic forward-planning that could make the process of separation, divorce or dissolution easier in the future by establishing financial arrangements in advance and removing the potential for disagreement or conflict.

In February 2014, the Law Commission recommended that the government should put in place legislation to introduce “qualifying nuptial agreements”. The Law Commission recommends that these agreements – including those made before or after a marriage or civil partnership, or in contemplation of separation – should be enforceable contracts, not subject to the scrutiny of the courts. In order to satisfy the requirements for a valid pre-marital agreement the parties should:

- Take independent legal advice (and, if necessary, financial advice) before entering into an agreement. This protects both partners against any future claim that they were pressurised to enter into the agreement.
- Allow plenty of time to draw up the agreement – the recommended minimum is at least 21 days before a wedding or civil partnership ceremony.
- Both parties must be prepared to disclose all of their assets and financial circumstances.
- The agreement should make it clear what happens to the assets belonging to each partner individually, as well as those accumulated during the marriage or civil partnership.
- The agreement is likely to cover what will happen to the couple’s home, particularly regarding who lives there and how the proceeds of sale should be divided if it is to be sold.
- It should also contain provisions for review, for example, on the birth of a child or another significant event.

Protecting parents’ interests

At a time of high property prices, there is an increasing trend for parents to make financial contributions to a first home for their children or, perhaps at a later stage, to buy a larger property jointly with a son or daughter and their spouse and to share it with them.

If the parent views the money as an investment, or wishes to recover it if relationships break down, this should be recorded in a legally binding document. This will help prevent potentially costly disputes on divorce as to whether the money was intended as a gift. If the money was provided as a gift to the child, it is likely to form part of the marital pot of assets available for division in a subsequent divorce or dissolution. In these circumstances, a pre-marital or post-marital agreement may be used to protect the recipient’s interests.

Contact us for advice

If you are wondering whether a pre-marital or post-marital agreement is right for you, it may be helpful to talk to a family law specialist – like a member of our team – who can provide independent, objective advice to help you make an informed decision.

Although helpful, the brief information included in this document is intended as a guide only and does not constitute legal advice. For more detailed information regarding any of the matters raised in this guide, tailored to suit your specific circumstances, please contact a member of Mander Hadley’s family team.